

February 8, 2015



Exemption 6

Re: Freedom of Information Act Request – Reprocessed
Tracking Number: 15-FOI-00147

Dear **Exemption 6**

In accordance with Amtrak's Appeals Office December 7, 2015 decision of your September 3, 2015 appeal, the FOIA Office has reprocessed your August 10, 2015 request.

The FOIA Office was advised by the Appeals Office to contact Middlesex Corporation regarding disclosure of the Contract Agreement between Middlesex Corp and Amtrak (RFP – No. X 069 11914 – Second Track Project – Springfield RR Line). Based on Amtrak's FOIA regulations 49 CFR 701.9, Middlesex was contacted regarding disclosure and had no objections to the enclosed records.

Middlesex objects to the disclosure of records submitted in response to RFP – No. X 069 1191, which they have advised, contains confidential, commercial, privileged and financial information. Therefore, such records are being withheld in full pursuant to exemption 4 of the FOIA. Exemption 4 "affords protection to those submitters who are required to furnish commercial or financial information to the government by safeguarding them from the competitive disadvantages that could result from disclosure." See *U.S. Department of Justice FOIA Guide*.

The bids not accepted by Amtrak are being withheld in full under exemption 3 of the FOIA based on 41 U.S.C. §4702 - contractor proposals that are in the possession or control of an executive agency and that have not been set forth or incorporated by reference into contracts.

Pursuant to Amtrak's FOIA regulations (49 CFR 701.10), if you wish to appeal Amtrak's decision to withhold the above-mentioned information, you may file an appeal with Eleanor D. Acheson, Executive Vice President, Chief Legal Officer, General Counsel and Corporate Secretary, within thirty days (30) of the date of this letter, specifying the relevant facts and the basis for your appeal. Your appeal may be sent to Ms. Acheson at the above address. The President and CEO of Amtrak have delegated authority to the General Counsel and Corporate Secretary for the rules and compliance to the FOIA.

If you have any questions regarding the processing of your request, please feel free to contact me via e-mail at Hawkins@amtrak.com or at (202) 906-3741.

Sincerely,

A handwritten signature in black ink, appearing to be "Sharron Hawkins", written over a horizontal line.

Sharron Hawkins
Lead FOIA Specialist

Enclosures

NATIONAL RAILROAD PASSENGER CORPORATION

60 Massachusetts Avenue NE, Washington, DC 20002



August 11, 2015

Exemption 6
Exemption 6

Subject: Freedom of Information Act Appeal of
Freedom of Information Act Request # 15-FOI-00147

Dear Exemption 6
Exemption 6:

On May 15, 2015, you submitted a Freedom of Information Act ("FOIA") request to Amtrak seeking the following: "all geographic/GIS, PDF, schematics or text documents detailing speed limits for Amtrak rail segments passenger travel between Washington DC and Boston". In a letter dated July 1, 2015, the Amtrak FOIA Office notified you that the records, which are included in Amtrak's Northeast Corridor Employee Timetable, were being withheld in full based on Exemption 7(F) of the FOIA. On July 7, 2015, you submitted an appeal of the decision of the Amtrak FOIA Office.

I have reviewed this matter and found that Exemption 7(F) has been improperly applied. Accordingly, the decision of the FOIA Officer to deny your request is reversed and your appeal is sustained. I am directing the Amtrak FOIA Office to reprocess your FOIA request in accordance with my decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Eleanor D. Acheson", with a small flourish at the end.

Eleanor D. Acheson
Chief Legal Officer, General Counsel & Corporate Secretary

cc: Sharron Hawkins – Amtrak
Carol F. Westmoreland, Esq. - Amtrak

NATIONAL RAILROAD PASSENGER CORPORATION

60 Massachusetts Avenue NE, Washington, DC 20002



August 13, 2015

Exemption 6
Exemption 6

Subject: Freedom of Information Act Appeal of
Freedom of Information Act Request # 15-FOI-00170

Dear Exemption 6:

On May 22, 2015, your client, Exemption 6 submitted a Freedom of Information Act ("FOIA") request to Amtrak seeking the following: "the current Employee Timetable (describing speed limits and scheduled arrival times for passenger trains) for the Northeast Corridor in effect as of the request date, in electronic (e.g. PDF) format, and the Employee Timetable for the Northeast Corridor in effect on Tuesday, May 12, 2015 in electronic format (e.g. PDF) format". In a letter dated July 1, 2015, the Amtrak FOIA Office notified Exemption 6 that the Employee Timetable was being withheld in full based on Exemption 7(F) of the FOIA. On July 7, 2015, you submitted an appeal of the decision of the Amtrak FOIA Office.

I have reviewed this matter and found that Exemption 7(F) has been improperly applied. Accordingly, the decision of the FOIA Officer to deny your request is reversed and your appeal is sustained. I am directing the Amtrak FOIA Office to reprocess your FOIA request in accordance with my decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Eleanor D. Acheson", with a small flourish at the end.

Eleanor D. Acheson
Chief Legal Officer, General Counsel & Corporate Secretary

cc: Sharron Hawkins – Amtrak
Carol F. Westmoreland, Esq. - Amtrak

Hawkins, Sharron

From: Westmoreland, Carol
Sent: Thursday, October 06, 2016 3:01 PM
To: [REDACTED]
Cc: [REDACTED]; Hawkins, Sharron
Subject: FOIA Appeal: 16-FOI-00142
Attachments: FOIA Appeal 16-FOI-00142.pdf

Dear [REDACTED], Enclosed please find Amtrak's response to your FOIA Appeal 16-FOI-00142. Please note that I have copied your attorney, [REDACTED], who contacted Amtrak on your behalf, on this email. If you have any questions, please feel free to contact me. Thank you.

Carol

Carol F. Westmoreland
Senior Associate General Counsel
Corporate Affairs
National Railroad Passenger Corporation (Amtrak)
60 Massachusetts Avenue, NE
Washington, DC 20002
Tel 202. 906.2563 ATS 777.2563
Fax 202.906.2821



October 6, 2016

VIA ELECTRONIC MAIL

Exemption 6

Subject: Freedom of Information Appeal of
Freedom of Information Act Request # 16-FOI-00142

Dear **Exemption 6**
Exemption 6:

This letter is in response to your appeal of your Freedom of Information Act ("FOIA" or the "Act") request, which was received by this office on April 29, 2016. For the reasons set forth herein, except as noted herein, I uphold the decision of the FOIA Office and deny your appeal.

BACKGROUND

On May 14, 2015, you submitted a FOIA request to Amtrak for an electronic copy of Amtrak's train tracking system. More specifically, your request was seeking the global positioning system data generated on each train as described in a press release found at <http://www.amtrak.com/cour1/872/253/Amtrak-teams-with-Google-to-Create-Train-Locator-Map-ATK-13-111.pdf>. Your request sought raw data, for the period of May 14, 2014 through May 14, 2015, generated by the trains and not the aggregated data that is sent to Google.

On March 31, 2016, Ms. Sharron Hawkins of the Amtrak FOIA Office sent you a letter which advised that Amtrak's Information Technology Department did not have the capabilities to capture the requested data. Ms. Hawkins' letter further advised that in order to obtain the data, Amtrak would have to contract with its vendor, Wi-Tronix to write a script, which would take approximately 16 hours; and build a second database of all the information in order to run the script, which, if run on a live system, could negatively impact Amtrak's computer system. The estimated time for this effort, Ms. Hawkins noted, is 80-120 total labor hours at approximately \$200 per hour.

Ms. Hawkins letter further advised that, in accordance with Amtrak's FOIA Regulations 49 CFR 701.6, "Amtrak is not obligated to process a request for electronic records where creation of a record, programming or a particular format would result in a significant expenditure of resources or interfere with the corporation's operations." Ms. Hawkins noted that the U.S. Department of Justice FOIA Guide stipulates that when responding to a FOIA request, agencies are only required to release records in a format that is readily reproducible. She added that "the records you are seeking are not readily reproducible by Amtrak" and to produce such records would be an extremely costly endeavor that could impact Amtrak's operations.

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Shortly after receiving Ms. Hawkins' letter, you contacted her and asked which one of FOIA's nine statutory exemptions Amtrak is asserting. Ms. Hawkins advised that since records could not be produced, applying exemptions would not be appropriate in this case. In April 2016, you appealed the Amtrak FOIA Office's decision.

DISCUSSION

Your letter makes four assertions: 1) Disclosure of the Amtrak data is indisputably in the public interest; 2) Amtrak's prior use of the data demonstrates its ability to capture the data and disclose it to the public; 3) Amtrak is obligated to disclose data held by its contractors; and 4) Reuters is requesting the data without alteration in the format and has offered to coordinate to facilitate the transfer. Each of these is discussed more fully below.

(1) Disclosure of the Amtrak data is indisputably in the public interest

Your appeal notes that the "electronic public records are crucial to the public understanding because they will show whether and how often Amtrak trains exceed safe speed conditions." It further asserts that "Amtrak's treatment and response to this request raise questions about whether it is trying to find a way to deny access to this data to avoid public scrutiny of its employees' potential misconduct."

Ms. Hawkins' denial letter did not address any objections on Amtrak's part to the release of the type of information you requested. She merely noted that Amtrak did not release the information because it is not readily reproducible in the format you requested. In a follow-up communication, you asked Ms. Hawkins which of the nine exemptions available under the FOIA were applied. Ms. Hawkins advised that since records could not be produced, applying exemptions would not be appropriate in this case. Therefore, your assertion that the disclosure of the Amtrak data is indisputably in the public interest does not have any bearing on the facts in this matter.

(2) Amtrak's prior use of the data demonstrates its ability to capture the data and disclose it to the public.

In your appeal you state that "Amtrak claims that it cannot access the requested data and that it would incur substantial expense in engaging a contractor to write a script to access it are contradicted by its prior use and disclosure of this data." Presumably, you are referring to the data that is accessed through the Google train tracking application that you referenced in your original request. Further, your appeal questions why Amtrak's contractor, Wi-Tronix, "would require 16 hours to write a script to access the data, but omits any explanation as to why Wi-Tronix would need so much time to access data from a system it designed, particularly because it would only be exporting copies of existing tables." You also state that because Amtrak and Wi-Tronix already have worked with global positioning system data, and "because raw data is currently being provided to third parties, Amtrak cannot contend that it would be burdensome to provide it to the public" and Amtrak should provide the information "even if new protocols or staff involvement are required".

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In support of your position you cite to PublicResource.org v. Internal Revenue Serv., 78 F. Supp. 3d 1261 (D.D. Ca. 2015). In PublicResource.org, the IRS objected to a request to release certain forms in Modernized E-file (MeF) format even though the IRS maintained the files in MeF format at the time. The IRS argued that it would have to spend \$6,200 to develop protocols and train staff to be able to redact exempt information from the forms in the MeF format before the non-exempt information is produced for release. The court citing to TPS, Inc. v. United States DOD, 330 F.3d 1191, 1995 (9th Cir 2003) noted that when an agency already creates or converts documents in a certain format, absent compelling evidence to the contrary, it is not an unnecessarily harsh burden to supply the documents to others in the same format. According to the court, this is especially the case where complying with the request would not impose a significant burden or interference with the agency's operation. Id. This is not the case here.

The data that is used to power the Google map application is a live data feed for active trains. Unlike the data used in the Google application, the data that you requested is not active transaction data. You have requested data that is retained in two operational systems that are performing live and critical functions for the operations of the railroad, including, but not limited to, monitoring the health and location of the trains and Amtrak's engineers. Amtrak's Information Technology (IT) Department has advised that in order to satisfy the request to extract the train location data from these systems the activities listed below would be necessary.

- 1) Environment build out – Because these systems are critical to train operations, Amtrak cannot perform data queries or analysis on live data. A copy would have to be generated and placed in a separate data store to allow the production systems to operate. Environment build out includes standing up new database servers (and possibly application servers if that is how the referential integrity is established), setting up the database shells and copying the data from the production systems to this newly established system. The newly established system would have to have sufficient storage to allow data to be merged and queries to be saved. It is estimated that this would be approximately 1 Terabyte of data. Both of the operational systems use over 300G. Amtrak does not own or manage its data center and so Amtrak would have to request this effort through a vendor.

- 2) Data analysis – These are proprietary systems which means that the companies that provide the software and support are the only ones that know accurately which tables in the database and which fields in the tables correspond to the data being requested. Amtrak does not have systems experts in the applications at such a technical level. We have administrators that provide support to the servers and network that house the applications but no in-house technicians capable of handling the applications themselves. The reason for this is that it isn't practical or cost effective for Amtrak to hire such specialized personnel since it is supported by the vendors. In order to do the analysis, Amtrak would have to engage with either the vendors or an outside contractor to come in and do data analysis to provide insight as to what data to extract to satisfy the FOIA request.

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3) Development – Considering that there are two systems then two sets of scripts would have to be developed to extract and store the requested data. Once the data has been stored off it would need to be written to a medium that can be delivered to the requester.

4) Environment decommission – Once the work has been completed the temporary environments have to be retired. Since Amtrak does not own or manage the data center this would have to be handled through a service request with its vendor.

The estimated cost of these activities, not including costs associated with Amtrak labor, is \$24,000. Based on the foregoing, Amtrak has determined that the information you requested is not readily reproducible.

(3) Amtrak is obligated to disclose data held by its contractors

In your appeal, you assert that Amtrak's denial letter suggests that Amtrak believes that since the Amtrak data is maintained by Exemption 6, Amtrak does not have to produce it in response to a FOIA request. Your appeal does not cite to, and I have not found, any statements in Ms. Hawkins' letter of March 31, 2016 that would reasonably support this assertion.

(4) Exemption 6 is requesting the data without alteration in the format and has offered to coordinate to facilitate the transfer

In your final grounds for appeal, you note that Exemption 6 "has requested the data in its original format and has offered to assist with any technological obstacles to the data disclosure". In your appeal, you suggest several ways that you believe that Amtrak can satisfy your FOIA request. Amtrak determined that in order to satisfy your May 14, 2015 FOIA request it would need to follow the steps noted above.

Your appeal also notes that "any burden on Amtrak here is one of its own making" because it has "elected to maintain the data in a form that is difficult to reproduce and because, in instructing its contractor, it disregarded FOIA's instruction to make the records readily reproducible". Your appeal provides no support for this statement in fact or in law. Accordingly, I find that this assertion is without merit.

CONCLUSION

Although you make four assertions in your appeal and I have addressed each of them above, when considered closely, the only true ground appears to be that Amtrak erred in finding that the documents are not readily reproducible. (The other three assertions appear to be general statements regarding the general releasability of information under the FOIA.) As noted in the discussion above, producing the data requested pursuant to your FOIA request could not only adversely impact Amtrak's vital computer system, but producing it is cost prohibitive. Accordingly, based upon the foregoing discussion, the decision of the FOIA Officer to deny your

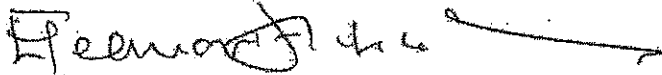
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request is upheld and your appeal is denied. You are advised that you may seek judicial review of this determination in accordance with the provisions of 5 U.S.C. § 552(a)(4) (2000).

Sincerely,



Eleanor D. Acheson

Executive Vice President, Chief Legal Officer, General Counsel and Corporate Secretary

cc: Sharron Hawkins - Amtrak
Carol F. Westmoreland, Esq. - Amtrak